

ENTERED

October 11, 2017

David J. Bradley, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

WILFRED PADILLA,
Petitioner,

VS.

LORIE DAVIS,
Respondent.

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CIVIL NO. B-14-262

ORDER

On May 12, 2017, the United States Magistrate Judge filed a Report and Recommendation [Doc. No. 84]. On June 5, 2017, Petitioner moved for more time to file what he called an “Application for Certificate of Appealability and Memorandum of Law.” The Court granted this extension. Petitioner filed a Memorandum of Law in Support of Application for Certificate of Appealability which the Court will consider both as applying to the Request for a Certificate of Appealability and also as his objections to the Report and Recommendation. [Doc. No. 91]

Having considered *de novo* the Magistrate Judge’s Report and Recommendation and the issues and objections raised by Petitioner’s Memorandum of Law, the Court hereby adopts the Magistrate Judge’s Report and Recommendation. That being the case, the motion for summary judgment [Doc. No. 73] filed by Respondent Lorie Davis is granted. Wilfred Padilla’s petition for *writ of habeas corpus* by a person in state custody pursuant to 28 U.S.C. § 2254 is denied, as are any other outstanding motions filed by Padilla.

Given the deference that § 2254 requires that a federal court give to a state court’s review of its own proceedings and prior circuit precedent, this Court finds that there is no outstanding issue that is debatable among jurists of reason. The issuance of a Certificate of Appealability is therefore denied.

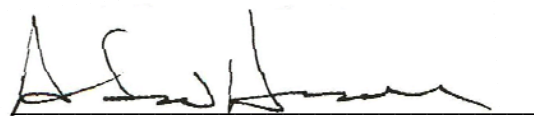
Although the court has certified that the appeal could not be taken in good faith under 28 U.S.C. § 1915(a)(3) and FED.R.APP.P. 24(a)(3), Padilla may challenge this finding pursuant to Baugh, by filing a separate motion to proceed IFP on appeal with the Clerk of Court, U.S. Court of Appeals for the Fifth Circuit, within 30 days of this order. The cost to file a motion to proceed on appeal with the Fifth Circuit is calculated below.

The fee for filing a notice of appeal is \$505. If Padilla chooses to appeal this Court's rulings, he would be assessed an initial partial fee of \$61.83. The agency having custody of the prisoner shall collect this amount from the trust fund account or institutional equivalent, when funds are available, and forward it to the clerk of the district court.

Thereafter, Padilla shall pay the balance of the filing fees, in periodic installments. The appellate is required to make payments of 20% of the preceding month's income credited to the appellant's prison account until appellant has paid the total filing fee of \$505.00. The agency having custody of the prisoner shall collect this amount from the trust fund account or institutional equivalent, when funds are available and when permitted by 28 U.S.C. § 1915(b)(2), and forward it to the clerk of this district court.

If Padilla moves to proceed on appeal, the clerk shall mail a copy of this order to the inmate accounting officer or other person(s) or entity with responsibility for collecting and remitting to the district court interim filing payments on behalf of prisoners, as designated by the facility in which the prisoner is currently or subsequently confined.

Signed this 11th day of October, 2017.

A handwritten signature in black ink, appearing to read 'Andrew S. Hanen', is written over a horizontal line.

Andrew S. Hanen
United States District Judge